



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on **July 23, 2004**

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-18440

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Application of **AMERICA WEST AIRLINES, INC., and MESA AIRLINES, INC.**
filed **6/17/04** for:

XX Exemption authority for America West for two years under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Los Angeles, California, and the terminal point Acapulco, Mexico; and (2) the terminal point Oakland, California, and the terminal point San Jose del Cabo, Mexico. The applicants state that the subject exemption authority will be used by America West to provide nonstop direct-carrier flights in the Los Angeles-Acapulco and Oakland-San Jose del Cabo markets.¹

XX Exemption authority for America West and Mesa Airlines for two years under 49 U.S.C. §40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between: (1) the terminal point Las Vegas, Nevada, and the terminal point San Jose del Cabo, Mexico, (2) the terminal point Las Vegas, Nevada, and the terminal point Puerto Vallarta, Mexico; (3) the terminal point San Diego, California, and the terminal point San Jose del Cabo, Mexico; and (4) the terminal point San Diego, California, and the terminal point Puerto Vallarta, Mexico. The applicants state that the subject exemption authority will be used pursuant to a code-share arrangement, whereby America West will place its "HP" code on the direct-carrier flights of Mesa Airlines in the Las Vegas-San Jose del Cabo/Puerto Vallarta and San Diego-San Jose del Cabo/Puerto Vallarta markets.

Applicant rep: **Joanne W. Young (202) 861-1532** DOT Analyst: **Linda L. Lundell (202) 366-2336**

DISPOSITION

XX Granted, subject to conditions (see below).

The action above was effective when taken: **July 23, 2004,** through **July 23, 2006.**

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX The authority granted is consistent with the aviation agreement between the United States and Mexico.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificates of public convenience and necessity

XX Standard Exemption Conditions (attached)

¹ No code-share services are proposed on these routes at this time.

Special Conditions/Remarks: The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. Consistent with our policy, the dormancy notice period for the exemption authority granted will begin December 18, 2004, the applicants' proposed startup date for these services. The exemption authority granted to America West to serve the Las Vegas-San Jose del Cabo/Puerto Vallarta and San Diego-San Jose del Cabo/Puerto Vallarta markets is limited to code-share services only.

The code-share operations conducted under this authorization are subject to the following conditions: (a) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and (b) the authority granted here is specifically conditioned so that neither America West nor Mesa shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports_aviation.asp

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.